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OFFICE OF PETITIONS

In re Application of :
Martin J. Steffensmeier, et al. :
Application No. 09/648,830 : **DECISION ON PETITION**
Filed: August 25, 2000 :
Attorney Docket No. 00CR002/KE :

This is a decision on the petition, filed January 8, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is not signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Joseph N. Ziebert appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts.

The petition is **GRANTED**.

A review of the record discloses that the application was held abandoned failure to take appropriate action in a timely manner after the decision of December 14, 2007 by the Board of Patent Appeals and Interferences. A Notice of Abandonment was mailed on February 27, 2008. On January 8, 2009, the present petition was filed, wherein petitioner argues that the Notice of Abandonment issued is error, since no abandonment existed.

For the reasons detailed in the petition, the Office concedes that the Notice of Abandonment was mailed in error. Accordingly, the Notice of Abandonment mailed February 27, 2008 is hereby vacated.

The application is being referred to the Technology Center technical support staff of Art Unit 2628 for withdrawing the holding of abandonment and for appropriate action by the Examiner in the normal course of business on the amendment filed January 8, 2009.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. All other inquiries regarding this application should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

09/648830
Petitioner correct.

Ex has approved the amendment
Atty. Dkt. No. 00CR002/KE

the Examiner from the Board of Patent Appeals and Interferences. The Decision on Appeal reversed the rejection of dependent Claims 4, 11 and 18 and affirmed the rejection of Claims 1-3, 5-10, 12-17, 19 and 20. As such, as of February 14, 2008 (two months after the mailing of the Decision on Appeal), the Examiner was required to either (1) convert dependent Claims 4, 11 and 18 into independent form by Examiner's Amendment, cancel all claims in which the rejection was affirmed, and issue the application; or (2) set a 1-month time limit in which Applicants may rewrite the dependent claims in independent form. See M.P.E.P. § 1214.06(I)(B). Neither action has yet been taken by the Examiner, and therefore, the Application should not be considered abandoned.

For convenient reference, Applicants provide the following timeline of events for the present Application:

- (1) On September 8, 2006, Applicants filed an appeal under 35 U.S.C. § 134 from a final rejection of Claims 1-20.
- (2) On December 14, 2007, the Board of Patent Appeals and Interferences rendered a decision that, as stated above, reversed the rejection of dependent Claims 4, 11 and 18 and affirmed the rejection of Claims 1-3, 5-10, 12-17, 19 and 20.
- (3) Pursuant to 37 C.F.R. § 1.304, Applicants had two months from the mailing of the Decision on Appeal to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action. No such action was taken by Applicants. Instead, Applicants were waiting to receive an Office communication from the Examiner notifying Applicants that the appropriate action had been taken by the Examiner as set forth in M.P.E.P. § 1214.06(I)(B) or asking Applicants to take such action.
- (4) As set forth in M.P.E.P. § 1214.06(I)(B), after Applicants did not appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action within two months from the mailing of the Decision on Appeal, the Examiner was required to either (1) convert dependent Claims 4, 11 and 18 into independent form by Examiner's Amendment, cancel all claims in which the rejection was affirmed, and issue the application; or (2) set a 1-month time limit in which Applicants may rewrite the dependent claims in independent form. Rather than comply with the requirements of M.P.E.P. § 1214.06(I)(B), the Examiner improperly mailed a Notification of Abandonment on February 27, 2008.

Accordingly, because the Examiner has not yet taken appropriate action in accordance with M.P.E.P. § 1214.06(I)(B), Applicants submit that the Notification of Abandonment should be withdrawn and the present Application should be considered to never have been abandoned.

Applicants are aware that this petition is being filed after the two-month time period set forth in 37 C.F.R. § 1.181(f). However, Applicants note that M.P.E.P. § 711.03(c)(I)(C) provides that "[r]ather than dismiss an untimely petition to withdraw the holding of abandonment